

second group of claims stands rejected under 35 U.S.C. §103(a) as being obvious in view of Awada, a third group of claims stands rejected under 35 U.S.C. §103(a) as being obvious in view of the combination of Awada and U.S. Patent No. 5,991,739 (“Cupps”), a fourth group stands rejected under 35 U.S.C. §103(a) in view of Awada and U.S. Patent No. 6,185,541 (“Scroggie”), and a fifth group stands rejected under 35 U.S.C. §103(a) in view of the combination of Awada, Cupps and Scroggie. Applicant notes that each rejection is based on the Awada reference.

Applicant respectfully traverses each of these rejections and requests their withdrawal for the following reasons.

First, as established by the accompanying Section 1.131 Declaration, Applicant conceived the claimed invention prior to the effective date of the Awada reference, November 29, 2000, and diligently reduced it to practice. The facts presented in the Declarations of Mark Duchow, John Schepke, and Bruce Sargent, as well as the other exhibits, plainly establish that the Applicant, Mr. Duchow, had fully conceived of the claimed invention prior to November 29, 2000. The facts also demonstrate that the claimed invention was reduced to practice by March 30, 2001, and further, that the critical period for the reduction to practice (approximately four months from November 2000 to March 2001) was reasonable, considering the nature and complexity of the invention. The facts also show that the Applicant was diligent during this period. Thus, under 37 CFR §1.131(b), Applicant has effectively sworn behind Awada, and the reference cannot be relied upon as prior art in the present application. Accordingly, claims 2-12, 14-21, and 24-66 are patentable over Awada or any combination of references including Awada under 35 U.S.C. §§102-103. Since all of the current rejections are based on Awada or a combination of references including Awada,

Applicant has successfully overcome the rejections, and the application is now in a condition for allowance.

In addition, Applicant respectfully submits that the rejection of claims 2, 3, 5/2, 5/3, 6/2, 6/3, 7/2, 7/3, 8/2, 8/3, 9/2, 9/3, 10/2, 10/3, 11/10/2, 11/10/3, 14, 15, 17/14, 17/15, 18/14, 18/15, 19/14, 19/15, 20/14, 20/15, 25/14, 25/15, 26/14, 26/15, 29/14, 29/15, 32, 33, 39, 44, 45, 53, and 54 under 35 U.S.C. §102(e) is improper because Awada fails to teach all of the features recited in independent claims 2-3, 14-15, 32, 44 and 53¹. Specifically, Awada fails to teach or suggest the claimed selection of a reseller based on buyer information. As recited in the claims, the buyer information is information entered by the user, and includes buyer location information such as a zip code or the like. Applicant's claimed systems and methods select a reseller based, at least in part, on the input buyer information. In sharp contrast to the claimed invention, Awada's mobile phone system selects merchants in the user's vicinity based on the location of the remote transmitting tower (base station) through which the user's cellular phone signal is being sent or by triangulating the exact location of the cellular phone (see Awada, abstract).

In no instance does Awada teach the use of the buyer information to determine the buyer location and/or the selection of a local merchant. The section of Awada referenced by the Examiner (page 3, para. 0043) teaches user preferences and profiles, such as categories of goods "i.e. electronics and sporting goods". However, this section does not teach or even mention or suggest buyer location information, such as zip code or address.

¹ In our Remarks, we specifically focus on the patentability of the independent claims because dependent claims and multi-dependent claims, by their nature, include all of the features and elements of the independent claims. Therefore, if the independent claims are patentable over the cited references, the dependent claims are likewise patentable.

For at least the foregoing reasons, claims 2-3, 14-15, 32, 44 and 53, as well as the claims respectively depending therefrom, are patentable over Awada under 35 U.S.C. §102(e).

With respect to the rejection of claims 38 and 56-59 under 35 U.S.C. §103(a), there is plainly no suggestion to modify Awada as proposed by the Examiner. In addition to its failure to teach or suggest the claimed use of buyer information (as discussed above), Awada has nothing to do with franchised or producer-assigned territories. More importantly, Awada entirely fails to suggest or teach the selection of merchants according to their territories. In sharp contrast, Awada is directed to systems and methods that select merchants within the vicinity of a cell phone caller by determining the location of a base station or triangulating the exact location of the cell phone.

In making out the rejection of claims 38 and 56-59 under Section 103, the Examiner took Official Notice that producer-specified territories are old and well known. The Examiner further proposes that the fact that exclusive distribution territories are common and well known is sufficient motivation to modify Awada to yield the claimed invention. Applicant respectfully submits that just because something is known and common, this is not a sufficient incentive for modifying a reference to support an obviousness rejection under Section 103.

For at least the foregoing reasons, claims 38 and 56-59 are patentable over Awada under Section 103(a).

With respect to independent claims 4, 12, 14, 16, 21 and 24, these claims stand rejected as being obvious under Section 103 in view of the combination of Awada and Cupps. In addition to the reasons discussed above in connection with the 131 Declaration and the rejection under Section 102, Applicant respectfully traverses this rejection and requests its withdrawal because the proposed combination fails to teach or suggest the selection of a reseller based on

buyer information and product selection. For at least the foregoing reasons, claims 4, 12, 16, 21, and 24, as well as all claims depending therefrom, are patentable over the combination of Awada and Cupps under Section 103.

With respect to independent claim 47, this claim also stands rejected as being obvious under Section 103 in view of the combination of Awada and Cupps. For at least the reasons discussed above in connection with the 131 Declaration and the rejection of claims 38 and 56-59 under Section 103, claim 47, as well as all claims depending therefrom, are patentable over the combination of Awada and Cupps under Section 103.

With respect to independent claim 62, this claim stands rejected as being obvious under Section 103 in view of the combination of Awada and Scroggie. For at least the reasons discussed above in connection with the 131 Declaration and the rejection of claims 38 and 56-59 under Section 103, claim 62, as well as all claims depending therefrom, are patentable over the combination of Awada and Scroggie under Section 103.

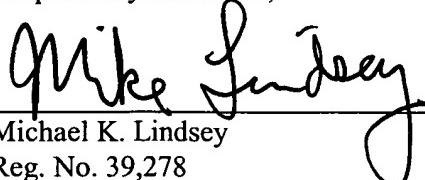
In conclusion, each of the pending claims in the application is in condition for allowance and early notice to this effect is earnestly solicited. If, for any reason, the Examiner is unable to allow the application and feels that a telephone conference would be helpful to resolve any issues, the Examiner is respectfully requested to contact the undersigned attorney at the 312-595-1169.

In re Application of Mark R. Duchow
Serial No.: 09/682,876

The Commissioner is authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 08-3038/03715.0003.NPUS00.

Respectfully submitted,

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